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November 14, 2006

Phil Hogen, Chairman
National Indian Gaming Commission
1441 L Street, NW
Suite 9000
Washington, D.C. 20005

**Re: Comments of the Cayuga Indian Nation of New York to
71 Fed. Reg. 30238 (May 25, 2006)**

Dear Chairman Hogen:

This firm represents the Cayuga Indian Nation of New York (the "Cayuga Nation" or "Nation"). On behalf of our client, we write to respectfully register the Cayuga Nation's objection to your Commission's proposed changes to the classification standards for Class II gaming set forth at 71 Fed. Reg. 30238 (May 25, 2006) ("Proposed Rule").

The Cayuga Nation is a small Indian nation of some 482 members, approximately 200 of which live in the Western New York area. Pursuant to a Class II Gaming Ordinance duly approved by the Commission on November 18, 2003, the Nation has operated two Class II gaming facilities with a total of 119 machines in facilities known as LakeSide Entertainment #1 and #2 in Union Springs and Seneca Falls, New York. While operations at these facilities were suspended in the fall of 2005 based on threats of litigation from local municipalities, the Nation intends to reopen these facilities upon the acceptance of its lands into trust by the Bureau of Indian Affairs. The revenue from these facilities is critical to the Nation's economic development plan and the welfare of its members.

The Proposed Rule, if adopted, will have a profound effect on the Nation's Class II gaming business, with a concomitant effect on the members of the Cayuga Nation. Our review of the Proposed Rule indicates that while it has been described as an effort to merely establish technical standards to regulate the integrity of the technology used in Class II gaming, its scope is actually much broader as it effectively reestablishes the legal standards for determining whether a particular game and its gaming equipment may be defined as Class II gaming.

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The Proposed Rule does nothing less than overrule all current guidance on the classification of games under the Indian Gaming Regulatory Act (IGRA). Beyond this, the Proposed Rule would have the effect of overruling some ten years of case law, the product of which has been largely favorable to the interests of tribal governments. Finally, the Proposed Rule would also supplant all existing NIGC game classification opinions. Such a sea change in the legal landscape is highly suspect to say the least, particularly since there has been no court ruling or congressional action which could provide support for the Commission's current actions.

The new requirements that must be satisfied for a game to remain a Class II game grossly narrow the scope of Class II gaming. Inasmuch as these requirements are completely new and have never before been imposed upon a Class II game, it is likely that the Proposed Rule will engender inordinate and unnecessary confusion.

Of equal or even greater concern to the Nation is the quality of the gaming experience that would be offered under the Proposed Rule. We believe that the additional classification criteria will result in a game that is much slower and less entertaining than the Class II games the Nation has offered. In this regard, we fail to see how reducing the gaming experience to a point where it is no longer economically viable is consistent with the intent of IGRA. This is especially the case as the technology underlying the Class II gaming experience was never intended to limit the commercial success of this industry. Were it necessary to develop new Class II games, the requirements the Proposed Rule would place on them would result in these games being so slow and difficult to play as to render these games unprofitable. The Cayuga Nation, as well as manufacturers and others, have made a substantial investment in relying on the current Class II criteria, an investment which is threatened by the uncertainty created by this Proposed Rule.

Our objection to the Proposed Rule is also supported by the Economic Impact Study commissioned by the NIGC which clearly demonstrates that the proposed changes "would have a significant negative impact on Class II gaming and tribes that operate Class II gaming facilities." *"The Potential Economic Impact of Proposed Changes to Class II Gaming Regulations,"* Alan Meister, Ph.D., Analysis Group, Inc., (the "Analysis Group Report")¹(Executive Summary, p. i). As set forth in the

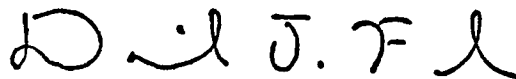
¹ Our review of the Analysis Group Report reveals that the Cayuga Nation has been omitted from the report, as it is not listed as a nation or tribe operating a Class II gaming facility in New York. (See, Analysis Group Report pp. 28, 55). The Analysis Group Report is based on the operations of Class II gaming facilities through the end of 2005. The Nation's Class II gaming facilities were in continuous

Analysis Group Report, the “negative economic impacts” resulting from the Proposed Rule include: a decrease in gaming revenue; a decrease in non-gaming revenue; a decrease in the variety and quality of Class II gaming machines; temporary gaming facility closures or partial closures; a decrease in tribal government revenue; an increase in costs; and a decrease in the number of tribal member jobs. (*Id.* at pp. i-ii). Additionally, the Analysis Group Report identifies “broader economic impacts on the Indian gaming industry” including: a decrease in leverage that tribes would have in the negotiation/renegotiation of Class III gaming compacts; restriction of new entry into the Class II machine market; and a change in the degree of competition experienced by Class III gaming facilities. (*Id.*).

While our client understands and respects the NIGC’s role in regulating Indian gaming, it is clear that the Proposed Rule offers little if anything that is positive or helpful to Indian tribes and much that is harmful, as your own economic analysis reveals. On this basis, the Cayuga Nation respectfully requests your reconsideration of the Proposed Rule.

Very truly yours,

FRENCH-ALCOTT, PLLC

A handwritten signature in black ink, appearing to read "D. J. French". The signature is stylized with a large initial "D" and a cursive "J".

Daniel J. French

DJF/mm

cc: Clint Halftown
Timothy Twoguns
Gary Wheeler
BJ Radford
Lee Alcott, Esq.

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operation from June of 2004 through September and October 2005; as noted, the closure of these facilities was only temporary. The report’s author, Alan Meister, Ph.D., has advised the undersigned firm that the omission of the Cayuga Nation was based on information received from the NIGC indicating that the Nation’s facilities had closed. The Nation intends to submit comments to the Analysis Group Report and Dr. Meister has informed this firm that the Cayuga Nation’s Class II operations will be included in his revised report.